

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

No. 9:10-CR-6

United States of America

v.

Gerardo Bautistia-Alvarado

Defendant

Findings of Fact and Recommendations on Guilty Plea

Pursuant to 28 U.S.C. § 636(b), this matter was referred to the undersigned United States Magistrate Judge to receive defendant's guilty plea.

On May 12, 2010, defendant, defendant's counsel, and the government came before the court for guilty plea and allocution on Count I of the Indictment filed herein, charging a violation of 31 U.S.C. § 5332. After conducting proceedings in the form and manner prescribed by Rule 11 of the Federal Rules of Criminal Procedure, the undersigned accepted and bound defendant to the guilty plea upon finding that:

(1) Defendant, after consultation with counsel of record, knowingly and voluntarily consents to pleading guilty before a United States magistrate judge,

and did plead guilty to Count I of the Indictment.

(2) Defendant is fully competent and capable of entering an informed plea, is aware of the nature of the charges and the consequences of the plea, and the plea of guilty is a knowing and voluntary plea supported by an independent basis in fact containing each of the essential elements of the offense.

(3) Defendant's plea is made pursuant to a plea agreement, a copy of which was produced for inspection and filed in the record. The plea agreement is of the type specified in Fed. R. Crim. P. 11 (c)(1)(A) and (B), in that (1) the government agrees to not bring, or move to dismiss, other charges and (2) the parties agree and make a non binding recommendation that a particular provision of the Sentencing Guidelines, policy statement, or sentencing factor does or does not apply.

(4) Defendant was advised that the court may defer its decision as to acceptance or rejection of the plea agreement until it reviews the presentence report, and:

- (a) if the court rejects the plea agreement's stipulations regarding appropriate sentencing factors, defendant will have no right to withdraw the plea;
- (b) if the court accepts that part of the plea agreement provision wherein the United States agrees to dismiss or not bring other charges, such agreed disposition will be included in the judgment; but if the court rejects that provision, the court will give defendant an opportunity to withdraw the plea of guilty; and, in that event,
- (c) if the plea is not withdrawn, the court may dispose of the case less favorably toward the defendant than the plea agreement contemplates.

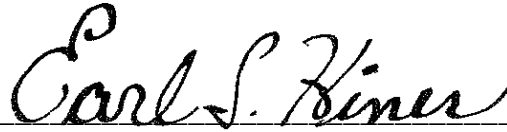
RECOMMENDATIONS

Defendant should be adjudged guilty of the offense to which he has pleaded guilty. The court should defer its decision as to acceptance or rejection of the plea agreement until it reviews the presentence report.

OBJECTIONS

Upon conclusion of plea proceedings, both parties stated that they do not object to the findings and recommendations stated above.

SIGNED this 13 day of May, 2010.

A handwritten signature in cursive script, reading "Earl S. Hines", written over a horizontal line.

Earl S. Hines
United States Magistrate Judge